

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

IN RE) Bankruptcy Case
DANIEL GARY WILLIAMS,) No. 11-61683-fra7
Debtor.) MEMORANDUM OPINION¹

The Court has entered an order dismissing the above-captioned case pursuant to Code § 707. [See Docket #46, and the Court's memorandum opinion Docket #45].

The Debtor has filed a timely appeal, which is now before the District Court. The Debtor moved for an order staying the dismissal of the case pending appeal. Bankruptcy Rule 8005. The Court agreed to a temporary stay, pending argument and briefing by the parties. Having reviewed the parties' briefs and considered their arguments, the Court concludes that the dismissal should not be stayed pending appeal.

In assessing whether a judgment or order should be stayed pending appeal, courts of the Ninth Circuit consider four factors: (1) whether the party seeking the stay has made a strong showing that he is likely to prevail on appeal; (2) whether the appellant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

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¹ This disposition is not intended for publication.

1 Considering these factors in order:

2 1. Likelihood of Success on the Merits: The Court, in its memorandum opinion of March 19, 2012,
3 articulated three separate grounds for dismissal of this Chapter 7 case. In order to prevail, the appellant must
4 demonstrate that the Court erred on all three grounds. The appellant makes no showing that he is likely to do
5 so. It is the Court's view that success on all three grounds is extremely unlikely.

6 2. Irreparable Injury: Appellant argues that he will be irreparably damaged by termination of the
7 bankruptcy case. He reasons that, absent the protection of the automatic stay under 11 U.S.C. § 362, the
8 State of Oregon will suspend his drivers license because he failed to settle a judgment arising out of a motor
9 vehicle accident. See ORS 809.130. He further states that the loss of his driving privileges will inevitably
10 result in loss of employment, since his current job requires that he maintain the ability to drive.

11 Assuming all of the foregoing to be true, the Court remains unpersuaded that the appellant inevitably
12 faces irreparable damage if the case is dismissed:

13 a) The appellant may apply to the court that rendered the judgment for an order permitting payment
14 of the judgment in installments. ORS 809.415 (1)(b)(D).

15 b) The appellant may move to convert this case to one under Chapter 13 of the Code, thus leaving
16 the automatic stay in place. The potential expense of conversion, and the potential for actually making
17 payments to creditors, is not sufficient to justify a stay of the order dismissing the case.

18 For the foregoing reasons, the Court will enter an order terminating the stay pending appeal in 14
19 days.

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22 FRANK R. ALLEY, III
23 Chief Bankruptcy Judge
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